



**UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/103,528 06/24/98 BENAZZI

E PET1673

EXAMINER

IM62/1206

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SAMPLE.D

ART UNIT

PAPER NUMBER

1755

DATE MAILED:

12/06/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory Action

Application No.

09/103,528

Applicant(s)

BENAZZI ET AL.

Examiner

David R. Sample

Art Unit

1755

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 November 1999 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either a timely filed amendment which places the application in condition for allowance or a Notice of Appeal. Alternatively, applicant may obtain further examination by timely filling a request for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d).

PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires three months from the mailing date of the final rejection.
b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 707.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136 (a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked.

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search. (see NOTE below);
(b) ☐ they raise the issue of new matter. (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

4. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
5. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
6. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-17.
Claim(s) withdrawn from consideration: 18-30.
9. ☐ The proposed drawing correction filed on _____ a) ☐ has b) ☐ has not been approved by the Examiner.
10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
11. ☐ Other:

Continuation of 4. Applicant's reply has overcome the following rejection(s): The § 103(a) rejection over Casci et al. (US 4,537,754). The Declaration submitted November 29, 1999 has established that, for a given Si/T ratio, a different product results from extraction of T atoms as compared to the as-synthesized zeolite.

Continuation of 6. The Declaration and Response to Final Rejection has been considered, but does NOT place the application in condition for allowance because:

Applicants assert that unexpected results occur as a result of the claimed extraction of T atoms from EU-1. This argument is not deemed persuasive. Unexpected results must be commensurate in scope with the claims to persuasively rebut a prima facie case of obviousness. MPEP 716.02(d). The evidence record is not commensurate in scope with present claim 1. For example, present claim 1 is not limited as to Si/T ratio. Claim 1 encompasses zeolites having Si/T ratios of, for example, 5000, and applicants have not shown that similar results occur for such materials. Moreover, The evidence of record deals only with zeolites with Al as the T atom. Present claim 1 encompasses materials where the T atoms are Fe, Ga or B. There is no evidence of record that similar results occur for zeolites having Fe, Ga or B as the T atom.


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